IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 9, 2006 Session

KEITH DWAYNE GREENE v. CLARA FAYE HELTON GREENE

Appeal from the Circuit Court for Hawkins County
No. 8045 Kindall T. Lawson, Judge

No. E2005-01394-COA-R3-CV - FILED MARCH 7, 2006

The issue presented in this post-divorce case involves the interpretation of a provision in the divorce decree allowing the wife to keep the mobile home she was awarded in the divorce on the land the husband received in the divorce for "as long as she needs to or has any desire to do so." The husband initiated this action seven years after the divorce, asserting that the provision should be construed as an award of periodic alimony, which should be terminated due to the wife's remarriage. The trial court held that the provision was unambiguous, was part of the division of the marital estate and not alimony, and was consequently not modifiable. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL PICKENS FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Douglas T. Jenkins, Rogersville, Tennessee, for the Appellant, Keith Dwayne Greene.

William E. Phillips II, Rogersville, Tennessee, for the Appellee, Clara Faye Helton Greene.

OPINION

I. Background

Keith Dwayne Greene and Clara Faye Helton Greene were married on March 6, 1982. One child was born to the marriage in 1992. On March 11, 1997, Mr. Greene filed his complaint for divorce, which alleged that the parties "have entered into an agreement concerning custody, child support and the division of their property which is satisfactory to each party and they request only the Court's approval." The same day, Ms. Greene filed her answer, stating, among other things, that she "expressly waived" her "right to be represented by, and/or have the advice of, legal counsel in

this divorce action," and requested that "this action be heard by the Court at the earliest possible time without any further notification of any kind whatsoever to this Defendant."

The following day, March 12, 1997, the trial court entered its divorce decree, ruling as follows in relevant part:

> 4. [Mr. Greene] is awarded the real estate owned by the parties and [Ms. Greene] shall execute a Quitclaim Deed to her interest in the land.
>
> 5. [Ms. Greene] is hereby awarded the mobile home owned by the parties[,] including furniture and furnishings. The mobile home is situated on the land awarded to [Mr. Greene] in Paragraph 4. *However, the parties have agreed that [Ms. Greene] may leave the mobile home on the land as long as she needs to or has any desire to do so.*
>
> 6. The parties represent to the Court that they have made a division of all other assets, including their automobiles, which is satisfactory to each party and the Court hereby approves the division.

[Emphasis added].

On September 15, 2004, after filing a petition to modify visitation and child support,[1] Mr. Greene filed a motion to amend his petition, requesting that the trial court interpret paragraph 5 above as periodic alimony, and to terminate the "alimony," presumably by forcing Ms. Greene to remove the mobile home, because of her remarriage. The trial court granted the motion to amend, heard arguments and considered briefs filed by the parties, and entered an order holding "as a matter of law without taking proof" that "the arrangement for the mobile home to sit upon [Mr. Greene's] property is not periodic alimony."

II. Issues Presented

Mr. Greene appeals, raising the issue of whether the trial court erred in ruling that the provision in the divorce decree that Ms. Greene would have the right to "leave the mobile home on the land as long as she needs to or has any desire to do so" was part of the division of marital property and not periodic alimony, and therefore not subsequently modifiable. *Towner v. Towner*, 858 S.W.2d 888, 890 (Tenn. 1993). In his brief, Mr. Greene asserts that the only relief he is requesting on appeal is that this court remand the case for an evidentiary hearing regarding the intention of the parties at the time they entered into and executed their marital dissolution agreement.

[1] The parties entered into an agreement regarding the visitation and child support issues raised in this motion, which the trial court approved. Neither party raises an issue on this appeal regarding visitation or child support.

III. Standard of Review

In this non-jury case, our review is *de novo* upon the record of the proceedings below; but the record comes to us with a presumption of correctness as to the trial court's factual determinations which we must honor unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville,* 898 S.W.2d 177, 181 (Tenn. 1995); *Union Carbide Corp. v. Huddleston,* 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law, however, are accorded no such presumption. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett,* 860 S.W.2d 857, 859 (Tenn. 1993).

A marital dissolution agreement ("MDA") is a contract and thus is generally subject to the rules governing construction of contracts. *Johnson v. Johnson,* 37 S.W.3d 892, 896 (Tenn. 2001); *Honeycutt v. Honeycutt,* 152 S.W.3d 556, 561 (Tenn. Ct. App. 2003). Because "the interpretation of a contract is a matter of law, our review is *de novo* on the record with no presumption of correctness in the trial court's conclusions of law." *Honeycutt,* 152 S.W.3d at 561.

IV. Analysis

In *Honeycutt,* this court discussed the general rules and principles guiding the construction of a contract, stating as follows:

> The cardinal rule in the construction of contracts is to ascertain the intent of the parties. *Bradson Mercantile, Inc. v. Crabtree,* 1 S.W.3d 648, 652 (Tenn.Ct.App.1999) (citing *West v. Laminite Plastics Mfg. Co.,* 674 S.W.2d 310 (Tenn.Ct.App.1984)). If the contract is plain and unambiguous, the meaning thereof is a question of law, and it is the Court's function to interpret the contract as written according to its plain terms. *Id.* (citing *Petty v. Sloan,* 197 Tenn. 630, 277 S.W.2d 355 (1955)). The language used in a contract must be taken and understood in its plain, ordinary, and popular sense. *Id.* (citing *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.*, 521 S.W.2d 578 (Tenn.1975)). In construing contracts, the words expressing the parties' intentions should be given the usual, natural, and ordinary meaning. *Id.* (citing *Ballard v. North American Life & Cas. Co.*, 667 S.W.2d 79 (Tenn.Ct.App.1983)). If the language of a written instrument is unambiguous, the Court must interpret it as written rather than according to the unexpressed intention of one of the parties. *Id.* (citing *Sutton v. First Nat. Bank of Crossville,* 620 S.W.2d 526 (Tenn.Ct.App.1981)). Courts cannot make contracts for parties but can only enforce the contract which the parties themselves have made. *Id.* (citing *McKee v. Continental Ins. Co.,* 191 Tenn. 413, 234 S.W.2d 830 (1950)).

> In *Heyer-Jordan & Associates v. Jordan*, 801 S.W.2d 814, 821 (Tenn.Ct.App.1990), this Court stated that "in the absence of fraud or mistake, a contract must be interpreted and enforced as written, even though it contains terms which may be thought harsh and unjust." *See Petty v. Sloan*, 197 Tenn. 630, 277 S.W.2d 355, 359 (1955).

Honeycutt, 152 S.W.3d at 561-62 (citing *Pitt v. Tyree Organization Ltd.*, 90 S.W.3d 244 (Tenn. Ct. App. 2002))(citation omitted).

Ms. Greene argues that the trial court correctly determined that the language of the divorce decree stating that "the parties have agreed that [Ms. Greene] may leave the mobile home on the land as long as she needs to or has any desire to do so" is unambiguous. We agree. "A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one. A strained construction may not be placed on the language used to find ambiguity where none exists." *Farmers-Peoples Bank v. Clemmer*, 519 S.W.2d 801, 805 (Tenn. 1975). Further, "an ambiguity does not arise in a contract merely because the parties may differ as to interpretations of certain of its provisions." *Cookeville Gynecology & Obstetrics, P.C. v. Southeastern Data Systems, Inc.*, 884 S.W.2d 458, 462 (Tenn. Ct. App. 1994). The language at issue is not of uncertain meaning, nor is it reasonably susceptible to more than one interpretation.

The trial court therefore did not err in determining that an evidentiary hearing as requested by Mr. Greene was unnecessary under the circumstances. Parol evidence is inadmissible to vary, alter or contradict a decree incorporating an MDA "where the decree is complete, unambiguous, and valid, or where there is no fraud, accident or mistake, or claim of allegation thereof with respect to the agreement incorporated in the instrument." *Kensinger v. Conlee*, Nos. 02A01-9811-CV-00322, 1999 WL 553713 at *6 (Tenn. Ct. App. W.S., filed July 30, 1999).

In the case of *Vanatta v. Vanatta*, 701 S.W.2d 824 (Tenn. Ct. App. 1985), the court, presented with an issue similar to the one *sub judice*, noted that "[j]udgments and decrees must be construed in the light of the pleadings, particularly the prayer of the bill or complaint," and stated as follows:

> In the view of this Court, the provision in the settlement agreement and decree, quoted above, for payment of mortgage installments by the husband were a part of the division of property as agreed upon by the parties and approved by the Court. The complaint makes no prayer for alimony in solido or in futuro, and neither is mentioned in the settlement agreement or the divorce decree. The appellation of alimony arises first in defendant's petition in an effort to establish a basis for relief from the payments established in the settlement agreement and decree.

Vanatta, 701 S.W.2d at 826.

Similarly to *Vanatta*, in this case there is no mention of alimony in either the complaint or answer, nor anywhere else in the initial divorce proceedings. The first appellation of alimony arises some seven years after the divorce decree, with Mr. Greene's motion to amend his petition to modify visitation and child support. Mr. Greene's own complaint for divorce states that the parties "have entered into an agreement concerning custody, child support and *the division of their property* which is satisfactory to each party." [Emphasis provided].

At the time they negotiated the MDA, the parties were clearly at liberty to agree that the provision allowing Ms. Greene to keep her mobile home on the land awarded to Mr. Greene would be considered spousal support. They further could have provided that Ms. Greene would be required to remove the mobile home in the event of remarriage or cohabitation with another person, but they did not so agree. Under these circumstances, we hold the trial court did not err in holding, without an evidentiary hearing, that the provision at issue was part of the division of marital property. Presented with similar situations, our courts have reached the same conclusion in other cases. *See Towner v. Towner*, 858 S.W.2d 888, 891 (Tenn. 1993)(holding "[t]he agreement in this case, considered in light of all the circumstances, is essentially a property settlement agreement, rather than an order of support"); *Roberts v. Todd*, No. M2003-02594-COA-R3-CV, 2004 WL 2964717 at *6 (Tenn. Ct. App. W.S., filed Dec. 21, 2004)(holding "in view of the plain language of the divorce decree, we conclude that the provisions in the MDA dealing with the marital residence were purely in the nature of property division and not spousal support").

V. Conclusion

For the aforementioned reasons, the judgment of the trial court is affirmed and the case remanded for such further action as may be necessary, consistent with this opinion. Ms. Greene has requested that we hold this appeal to be frivolous. Exercising our discretion, we do not find this appeal is frivolous. Costs on appeal are assessed to the Appellant, Keith Dwayne Greene.

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SHARON G. LEE, JUDGE